

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAWN BRUMLEY

Claimant

VS.

PRESBYTERIAN MANORS-MID-AMERICA

Respondent

AND

HARTFORD ACCIDENT & INDEMNITY

Insurance Carrier

KANSAS WORKERS COMPENSATION FUND

Docket No. 143,302

ORDER

Respondent appeals from an Award of Administrative Law Judge John D. Clark dated June 15, 1995. Oral argument was heard by the Appeals Board in Wichita, Kansas on October 11, 1995.

APPEARANCES

The respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Michael T. Harris of Wichita, Kansas. Claimant appeared not, as she had previously settled her claim with the respondent.

ISSUES

Respondent raises the single issue as to whether the Kansas Workers Compensation Fund (Fund) should be required to reimburse the respondent pursuant to K.S.A. 1987 Supp. 44-534a(b) for medical treatment expenses provided the claimant.

RECORD & STIPULATIONS

The Appeals Board has considered the record and adopted stipulations listed in the June 15, 1995 Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the evidentiary record and considering the briefs and arguments of the parties, the Appeals Board finds as follows:

The claimant injured her neck and upper back in the performance of her job duties as a nurse's aide while employed by the respondent on December 7, 1987. Over nearly

a six (6) year period, respondent furnished medical treatment for the claimant's injuries at a total expense of fifty thousand, five hundred thirteen dollars and thirty-five cents (\$50,513.35). Claimant was treated by a multitude of doctors, utilizing various modalities of treatment. Finally, on September 23, 1993, before Special Administrative Law Judge David J. Wood, the claimant's claim was settled with the respondent agreeing to pay the claimant a lump sum amount of twenty-five thousand dollars (\$25,000.00), unauthorized medical and any outstanding medical expenses incurred prior to the date of the settlement hearing. Previous to the settlement hearing, on September 13, 1990, respondent impleaded the Fund, pursuant to K.S.A. 1987 Supp. 44-567(b), alleging that the claimant had a pre-existing impairment that constituted a handicap and claimant's resulting disability was either contributed to by the pre-existing impairment or would not have occurred but for the pre-existing impairment. At the settlement hearing, the respondent and the Fund agreed that all issues regarding Fund liability were reserved for future determination. However, the Fund liability issue concerning claimant's pre-existing impairment was not litigated by respondent before the Administrative Law Judge and, therefore, is not before the Appeals Board on appeal.

Prior to the settlement of this case, the claimant, at the request of her attorney, was examined and evaluated by Ernest R. Schlachter, M.D., of Wichita, Kansas, on three (3) separate occasions. Dr. Schlachter's testimony had been taken by deposition twice and is contained in the evidentiary record of this case. After the settlement, respondent requested Dr. Schlachter to review claimant's prior medical treatment and to express an opinion on the appropriateness and necessity of the medical treatment. In a subsequent deposition, taken on behalf of the respondent, Dr. Schlachter opined that any medical expenses incurred by the claimant following June 20, 1989, were not medically warranted or justified and there was no medical necessity for the procedures, treatment and testing. Following Dr. Schlachter's deposition, the respondent prepared a stipulation approved by the Fund that was filed in this matter, which itemized medical expenses incurred by the claimant after June 20, 1989 in the amount of forty-four thousand, six hundred eight dollars and sixty-nine cents (\$44,608.69).

Thereafter, respondent submitted its case to the Administrative Law Judge on the sole issue of whether the Fund should be required, pursuant to K.S.A. 1987 Supp. 44-534a(b) to reimburse the respondent for the alleged unreasonable and unnecessary medical expenses for treatment provided the claimant. Respondent argues that the uncontradicted testimony of Dr. Schlachter established that all the medical treatment provided the claimant after June 20, 1989 was not medically reasonable or necessary. Respondent contends that this unreasonable and unnecessary medical treatment expense, which was furnished by the respondent, totalled forty-four thousand, six hundred eight dollars and sixty-nine cents (\$44,608.69). Respondent asserts that K.S.A. 1987 Supp. 44-534a(b) requires that the Fund reimburse respondent or its insurance carrier for all medical benefits which are later determined to have been paid in excess of the amount of benefits the employee was entitled.

The Administrative Law Judge did not address the issue as to whether the forty-four thousand, six hundred eight dollars and sixty-nine cents (\$44,608.69) of medical treatment expenses paid by the respondent after June 20, 1989 was reasonable and necessary. The Administrative Law Judge did find, however, that he did not have authority to order the Fund to reimburse respondent for the alleged overpayments because this case was settled with the claimant prior to a full hearing on the claim. The Administrative Law Judge found that K.S.A. 1987 Supp. 44-534a(b) required that a full hearing on the claim be held before a determination could be made as to whether medical benefits provided by an employer were in excess of the amount of benefits the employee was entitled. The Administrative Law Judge went on to hold that since this particular case was terminated by settlement hearing and not by hearing and a written award, a full hearing on the claim as contemplated by K.S.A. 1987 Supp. 44-534a(b) was not held. Accordingly, the

Administrative Law Judge found that he did not have the authority to order the Fund to reimburse respondent for the alleged overpayment of medical expenses.

The Fund requests that the Appeals Board affirm the Administrative Law Judge's award. The Fund argues that the reason for the full hearing on the claim requirement contained in K.S.A. 1987 Supp. 44-534a(b) is to avoid collusion between the employer and the employee against the Fund. The Fund concludes that since the respondent and the claimant had settled this case instead of submitting it for a final decision, respondent cannot now make a claim for reimbursement against the Fund, pursuant to K.S.A. 1987 Supp. 44-534a(b).

The Appeals Board agrees with the Administrative Law Judge and the Fund that the Fund is not responsible, according to the facts of this case, to reimburse the respondent for medical expenses provided for the treatment of claimant's injuries. In the respondent's brief, filed before the Appeals Board, the respondent contends that the provisions of K.S.A. 1987 Supp. 44-534a(b) require the Fund to reimburse the employer for medical benefits on a claim ultimately found not to be compensable. The Appeals Board agrees with this argument. However, in the instant case, the question as to whether the claimant's claim is compensable is not the issue. The issue is whether the authorized medical treatment provided by respondent for claimant's compensable injuries was reasonable and necessary. The Administrative Law Judge found that the purpose of K.S.A. 1987 Supp. 44-534a(b) is to provide Fund reimbursement for medical or temporary total disability benefits paid by the employer which are partially or totally disallowed because the claim later is found not compensable for such reasons as: claimant failed to prove work-related injury, timely notice not given, timely written claim not filed or the Act does not apply to the parties.

It is the finding of the Appeals Board that when a dispute arises as to whether certain medical treatment that was provided, by an employer to an injured employee to cure and relieve the employee from the effects of the injury, was reasonable and necessary, the utilization and peer review procedures contained in K.S.A. 44-510 are to be utilized. In this case, medical treatment was provided by authorized health care providers for a compensable injury. K.S.A. 44-510 provides the procedure which includes the health care provider as a party when determining a dispute as to whether certain medical treatment was reasonable and necessary. If the medical treatment is determined to be unjustified treatment pursuant to this procedure, then the health care provider, and not the Fund, is required to repay the unjustified expenses. The Appeals Board finds K.S.A. 44-510, and not K.S.A. 1987 Supp. 44-534a(b), is the proper statute that is required to be followed in the determination of this issue. Accordingly, the Appeals Board finds that respondent's request for reimbursement of the questioned medical expenses in accordance with K.S.A. 1987 Supp. 44-534a(b) is denied.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark, dated June 15, 1995, that denied respondent's request for the Kansas Workers Compensation Fund to reimburse it for certain alleged unreasonable and unnecessary medical expenses should be, and is hereby, affirmed. The Appeals Board holds, according to the facts of this case, that a dispute that arises in reference to the question of whether medical treatment provided the claimant was reasonable and necessary should be brought in accordance with the procedure set forth in K.S.A. 44-510 and not by requesting reimbursement from the Kansas Workers Compensation Fund pursuant to K.S.A. 1987 Supp. 44-534a(b).

IT IS SO ORDERED.

Dated this ____ day of November 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frederick L. Haag, Wichita, Kansas
Michael T. Harris, Wichita, Kansas
John D. Clark, Administrative Law Judge
Philip S. Harness, Director